

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07 CA 10238 WGY

ROBERT I POWERS
Plaintiff

v.

TRANSAMERICA INVESTMENT &
INSURANCE GROUP
Defendant

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**DEFENDANT TRANSAMERICA INSURANCE AND INVESTMENT GROUP'S
MOTION TO COMPEL FURTHER DEPOSITION TESTIMONY OF WILLIAM
CHAPMAN AND PRODUCTION OF DOCUMENTS**

Now comes the Defendant, Transamerica Occidental Life Insurance Company ("Transamerica"), erroneously sued herein as Transamerica Insurance & Investment Group, and moves this Honorable Court, pursuant to Fed R.Civ Pro 26 and 45 to compel William Chapman, Esquire ("Mr. Chapman"), the managing partner of Plaintiff Robert Powers ("Mr. Powers") law firm, Melick, Porter & Shea, to provide responsive answers and documents to questions posed to him at his deposition held on August 16, 2007.

Specifically, during Mr. Chapman's deposition, counsel inquired regarding Mr. Powers' prior life insurance, new life insurance, his hours and his status as a previous managing partner. With respect to each question, Mr. Chapman responded, in sum, that although he did not know the answer to each question, he had available information at his office which would assist him in responding to each question. Given Mr. Chapman's responses to these questions, counsel

suspended the deposition, in order to provide Mr. Chapman with time to obtain the answers to the deposition questions. Plaintiff's counsel did not agree to the suspension of the deposition. Page 45-46. See Affidavit of Philip M. Howe ("Howe Affidavit") filed herewith, Exhibit 1 for the deposition transcript of Mr. Chapman.

In connection with this issue, counsel wrote to Plaintiff's counsel, who also represented Mr. Chapman at the said deposition, a letter on August 29, 2007, and requested that Mr. Chapman provide the requested information. Indeed, counsel offered to take the continued deposition at Mr. Chapman's office to accommodate him. See correspondence from Philip M. Howe to David Angueira dated August 29, 2007, a copy of which is attached to the Howe Affidavit as Exhibit 2. To date, there has been no response to this letter. The deposition questions, to which there were no objections, are summarized as follows.

Prior Life Insurance

What were the prior life insurance policies on Mr. Powers, apparently issued by CNA? What were the face amounts? What were the issue dates? Are they still in force? If so, to what date are premiums paid? If not, when did they lapse? Why did Melick, Porter & Shea decide to lapse the prior policies? Transamerica requests copies of those life insurance policies on Mr. Powers. Chapman Deposition, pages 7 – 12, specifically page 8, lines 8-22, page 11, lines 5-8; pages 18 - 20, specifically page 18, lines 12-22; pages 39 and 40, specifically page 39, lines 1-21.

New Life Insurance

What is the status of the most recent application for life insurance on

Mr. Powers? Chapman Deposition, pages 43 and 44, specifically page 43, lines 1-22. If this has resulted in new life insurance policies issued on Mr. Powers, Transamerica requests copies of those policies.

Mr. Powers' Hours

On a monthly basis what were Mr. Powers' own non-billable and billable hours, both on hourly billable and on contingent fee cases, for 2005, 2006 and to date in 2007? Chapman Deposition, pages 23 – 25, specifically page 23, lines 3-24, 29 – 30, specifically page 30, lines 8-17, and page 41.

Managing Partner

When was Mr. Powers the managing or co-managing partner of Melick, Porter & Shea? Chapman Deposition, page 31, line 13 to page 32, line 7.

WHEREFORE, Transamerica moves this Honorable Court to allow the Motion to Compel and order Mr. Chapman to provide responsive answers and documents responsive to Transamerica's deposition questions and requests, as set forth herein at a continued deposition to be completed no later than seven days after the date of the Court's order.

For the Defendant

By its attorney,

/s/ Philip M. Howe
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CERTIFICATION UNDER LOCA RULE 7.1 (A) (2)

Counsel have conferred in good faith in an attempt to resolve or narrow the issues.

/s/ Philip M. Howe

Date: September 17, 2007

Philip M. Howe